

This Opinion is not a
Precedent of the TTAB

Mailed: September 21, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board
—

In re St. Dalfour International Incorporated
—

Serial No. 90527587
—

Anthony Giaccio of Giaccio LLC,
for St. Dalfour International Incorporated

Claudia A. Kopenski, Trademark Examining Attorney, Law Office 129,
Pamela Y. Willis, Managing Attorney.

—
Before Goodman, English, and Casagrande,
Administrative Trademark Judges.

Opinion by Casagrande, Administrative Trademark Judge:

St. Dalfour International Incorporated (“Applicant”) seeks registration on the Principal Register of the mark LAFOND (in standard characters) for “Fruit conserves; Fruit preserves; Fruit spreads; Jellies, jams; Nut butters” in International Class 29 and “Tea; Fruit sauces” in International Class 30.¹

¹ Application Serial No. 90527587 was filed on February 12, 2021, based upon applicant’s allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

The Trademark Examining Attorney has refused registration of Applicant's mark under Trademark Act Section 2(e)(4), 15 U.S.C. § 1052(e)(4), finding that the evidence shows that Applicant's mark is primarily merely a surname.²

When the refusal was made final,³ Applicant appealed⁴ and requested reconsideration.⁵ We suspended the appeal and remanded to the Examining Attorney to permit her to consider the request for reconsideration.⁶ After the Examining Attorney denied the request for reconsideration, the appeal resumed.⁷ Applicant and the Examining Attorney filed briefs,⁸ and the appeal is now ready for decision. We affirm the refusal to register.

I. Evidentiary Issue

There is a preliminary evidentiary matter. Both Applicant and the Examining Attorney attached evidence to their briefs. Applicant submitted the TSDR status page and certain pages in the prosecution file of third-party Registration No. 3141214. This

² See September 10, 2021, Nonfinal Office Action. Citations in this opinion to the application record, including the request for reconsideration and its denial, are to pages in the Trademark Status and Document Retrieval (TSDR) database of the United States Patent and Trademark Office (USPTO). The page numbers, if any are given, correspond to the page numbers in the downloaded .pdf-format version of the documents.

³ See May 5, 2022, Final Office Action.

⁴ See 1 TTABVUE (November 3, 2022, Notice of Appeal). Citations in this opinion to filings in proceedings before the Board are to TTABVUE, the Board's online docketing system. The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry, as paginated by TTABVUE, where any specifically cited portions of the document appear.

⁵ See November 3, 2022, Request for Reconsideration.

⁶ See 2 TTABVUE.

⁷ See 5 TTABVUE.

⁸ See 6 TTABVUE (Applicant's brief); 8 TTABVUE (Examining Attorney's brief). We note that the Examining Attorney's brief as filed in TTABVUE lacks a cover page.

evidence had not previously been submitted, and the Examining Attorney has objected that this evidence was filed contrary to Trademark Rule 2.141(d), 37 C.F.R. § 2.142(d). That rule provides that “[t]he record should be complete prior to the filing of an appeal. Evidence should not be filed with the Board after the filing of a notice of appeal.” We sustain the Examining Attorney’s objection and will not consider this late-filed evidence.⁹

The Examining Attorney too submitted additional evidence with her appeal brief, consisting of the Collins Dictionary English translation from the French term “le fond” and a page from the same dictionary reflecting that no results were found for “la fond.”¹⁰ Dictionary evidence is a type of evidence of which the Board may take judicial notice, and therefore we consider it. *In re Nieves & Nieves LLC*, 113 USPQ2d 1639, 1642 (TTAB 2015). We note that it would have been preferable to have placed this dictionary evidence into the record during prosecution rather than asking to have them placed into the record via judicial notice during the appeal. *See* Trademark Rule 2.141(d), 37 C.F.R. § 2.142(d).

⁹ The proper mechanism for requesting to place additional evidence in the record of a filed appeal is to request suspension of the appeal and a remand for further examination. Applicant did not make such a request. *See, e.g., In re Jimmy Moore LLC*, 119 USPQ2d 1764, 1767 (TTAB 2016) (“nothing prevented Applicant from filing a request for remand in order to introduce the evidence”).

¹⁰ *See* 8 TTABVUE 17-25.

II. Legal Background

Section 2(e)(4) of the Trademark Act prohibits registration of a mark that is “primarily merely a surname.” 15 U.S.C. § 1052(e)(4).¹¹ “The test for determining whether a mark is primarily merely a surname is the primary significance of the mark as a whole to the purchasing public.” *In re Hutchinson Tech. Inc.*, 852 F.2d 552, 7 USPQ2d 1490, 1492 (Fed. Cir. 1988); *see also In re Harris-Intertype Corp.*, 518 F.2d 629, 186 USPQ 238, 239 (CCPA 1975) (the “primary significance to the purchasing public” is determinative) (citing, *inter alia*, *Ex parte Rivera Watch Corp.*, 106 USPQ 145, 149 (Comm’r 1955)); *In re Six Continents Ltd.*, 2022 USPQ2d 135, at *6 (TTAB 2022) (“We conduct our analysis from the perspective of the purchasing public because it is that impact or impression which should be evaluated in determining whether or not the primary significance of a word when applied to a product is a surname significance.”) (cleaned up; citations omitted).

In *In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652 (Fed. Cir. 1985), the Federal Circuit considered several inquiries in determining whether the purchasing public would perceive a proposed mark as primarily merely a surname, including: (1) whether the applicant adopted a principal’s name and uses it in a way that reveals its surname significance; (2) whether the term has a non-surname, ordinary language meaning; and (3) the extent to which other people have that

¹¹ Marks that are primarily merely a surname can be registered upon proof of acquired distinctiveness under Section 2(f), 15 U.S.C. § 1052(f), *see, e.g., Schlafly v. Saint Louis Brewery, LLC*, 909 F.3d 420, 128 USPQ2d 1739, 1743 (Fed. Cir. 2018); *Ayoub, Inc. v. ACS Ayoub Carpet Serv.*, 118 USPQ2d 1392, 1396 (TTAB 2016), but Applicant does not make a claim of acquired distinctiveness in this case.

surname. *See* 225 USPQ at 653. In *In re Benthin Management GmbH*, 37 USPQ2d 1332 (TTAB 1995), we expanded on the list of potential inquiries that could lead to relevant evidence of whether the consuming public would primarily perceive the mark at issue as merely a surname. The two additional inquiries identified in *Benthin* are: (4) whether the term has the “structure and pronunciation” or “look and sound” of a surname; and (5) whether the stylization of lettering is distinctive enough to create a separate commercial impression.¹² *Id.* at 1333-34. “These inquiries are not exclusive, nor are they presented in order of importance; any of the inquiries—singly or in combination—as well as any other relevant circumstances, may shape the analysis in a particular case.” *Six Continents*, 2022 USPQ2d 135, at *5 (citations omitted).

III. Analysis

The Examining Attorney and Applicant refer to the inquiries identified in *Benthin* to organize their arguments, and so will we.

A. Degree the public is exposed to the surname LAFOND.

The Examining Attorney argues that LAFOND is not a rare surname. She points to evidence from many sources to support this argument, including:

- Evidence from the LexisNexis® U.S. public record surname database directory of cell phone and other phone numbers showing LAFOND appearing over 8,000 times as a surname;¹³

¹² There is no dispute in this case that the fifth inquiry does not apply because the mark in the application is in standard characters. Accordingly, we will not address this inquiry.

¹³ 8 TTABVUE 6-7 (citing Sept. 10, 2021, Office action, TSDR p.5).

- LexisNexis® database “PlusLexis.com” showing, *inter alia*, LAFOND appearing as a surname in the Business Leader Directories 19,257 times, the Newsworthy Person Directories 726 times;¹⁴
- Website screen captures from Legacy.com for the first 50 results of 740 family obituaries and memorials for individuals with the surname LAFOND;¹⁵
- A screen capture from familysearch.org reflecting that the top three countries where the surname LAFOND is found are Canada, the United States, and France;¹⁶ and
- Website screen captures from NameCensus.com showing the surname LAFOND appeared 4,112 times in the 2010 U.S. Census.¹⁷

Applicant argues that this makes LAFOND a rare surname in the United States.¹⁸

But “[e]ven a rare surname may be held primarily merely a surname if its primary significance to purchasers is that of a surname.” *In re Beds & Bars Ltd.*, 122 USPQ2d 1546, 1551 (TTAB 2017); *see also In re Eximius Coffee, LLC*, 120 USPQ2d 1276, 1281 (TTAB 2016) (“Section 2(e)(4) makes no distinction between rare and commonplace surnames ... and even a rare surname is unregistrable if its primary significance to purchasers is a surname.”) (citations omitted); *In re Adlon Brand GmbH*, 120 USPQ2d 1717, 1720-21 (TTAB 2016) (finding ADLON will be perceived merely as a surname despite that only 75 U.S. have that name, and pointing out that the “strictly numerical approach to a surname analysis has been squarely rejected”).

¹⁴ *Id.* at 7 (citing Jan. 23, 2023, Denial of Reconsideration, TSDR pp.32-44).

¹⁵ *Id.* at 4 (citing Jan. 23, 2023, Denial of Reconsideration, TSDR pp.124-27).

¹⁶ *Id.* at 4 (citing Jan. 23, 2023, Denial of Reconsideration, TSDR pp.124-27).

¹⁷ *Id.* at 3 (citing Jan. 23, 2023, Denial of Reconsideration, TSDR pp.44-49).

¹⁸ *See* 6 TTABVUE 8.

We agree with the Examining Attorney that this is more than sufficient evidence that the surname LAFOND is not uncommon in the sense implicated by the Section 2(e)(4) inquiry. *See, e.g., In re tapio GmbH*, 2020 USPQ2d 11387, at *9 (TTAB 2020) (LexisNexis® public record surname database showing 200 search results out of 374 occurrences, and U.S. census showing 304 occurrences, of the surname “Tapio” surname in America supported finding that “while TAPIO is not a common surname, there is meaningful and fairly widespread public exposure to the surname throughout the United States”); *In re Olin Corp.*, 124 USPQ2d 1327, 1331 (TTAB 2017) (7,552 LexisNexis® public record surname database results and 4,163 U.S. census results for “Olin”; Board found “OLIN is not rarely encountered as a surname, and therefore it is likely to be perceived by the public as having surname significance”); *Azeka Building Corp. v. Azeka*, 122 USPQ2d 1477, 1482 (TTAB 2017) (excerpts of several U.S. phone directories totaling 868 listings of individuals with the surname AZEKA and three websites showing use of AZEKA as a surname supported findings that the surname had “at least some public exposure in the media” and mark AZEKA’S RIBS is primarily merely a surname).

Applicant argues that “[t]here are no famous, or infamous, people with the name of Lafond.”¹⁹ That there may be no famous or infamous people with a particular surname is not a significant factor where, as here, the evidence shows that thousands of people in the U.S. have (or, when alive, had) the surname LAFOND, and the Plus.Lexis.com website reflects LAFOND appearing 19,257 times in the Business

¹⁹ *Id.* at 9.

Leader Directories and 726 times in the Newsworthy Person Directories.²⁰ Moreover, we previously declined to adopt such a legal requirement for less-than-common surnames. *See tapio GmbH*, 2020 USPQ2d 11387, at *10 (“We decline to adopt a heightened standard requiring ‘celebrity status,’ ‘national notoriety,’ or ‘significant media attention’ in order to find that a surname, although not common, has sufficient public exposure to be primarily merely a surname within the meaning of Section 2(e)(4) of the Trademark Act.”).

We find the surname LAFOND is not an uncommon one, and that the evidence here supports that U.S. consumers have been exposed to it as a surname.

B. Whether anyone connected with applicant has the surname LAFOND.

Applicant argues that “[n]o one connected with Applicant uses [LAFOND] as a surname.”²¹ We see no evidence in the record establishing this assertion of Applicant’s counsel. *See, e.g., Perfect Web Techs., Inc. v. InfoUSA, Inc.*, 587 F.3d 1324, 92 USPQ2d 1849, 1856 (Fed. Cir. 2009) (“this position is merely attorney argument lacking evidentiary support”) (citation omitted); *In re Simulations Publ’ns, Inc.*, 521 F.2d 797, 187 USPQ 147, 148 (CCPA 1975) (“Statements in a brief cannot take the place of evidence.”) (citation omitted). The Examining Attorney implicitly accepts the assertion, but points out that the absence of anyone connected with an applicant having the surname at issue “is a neutral factor.”²² We agree. Certainly if someone

²⁰ *See* Jan. 23, 2023, Denial of Reconsideration, TSDR pp.32-44.

²¹ *See* 6 TTABVUE 10.

²² *See* 8 TTABVUE 7.

connected in a significant way with an applicant had the surname at issue, that would tend to show that the consuming public would be familiar with the surname, but the opposite is not true. The mere fact that no one connected with an applicant has the surname at issue is, by itself, of minimal probative value. *See, e.g., Six Continents*, 2022 USPQ2d 135, at *11-12 (“[T]he fact that no one named Atwell is associated with Applicant does not tend to establish, one way or the other, whether consumers will perceive the proposed mark as a surname. This inquiry is neutral.”) (citation omitted); *tapio GmbH*, 2020 USPQ2d 11387, at *11 (same).

C. Whether LAFOND has any recognized meaning other than that of a surname.

Applicant acknowledges that there is no dictionary definition of LAFOND in the record.²³ But Applicant points out that urbandictionary.com defines “Lafond” as “the sweetest most loving person you will ever meet.”²⁴ We have previously explained that “The Urban Dictionary is a slang dictionary with definitions submitted by visitors to the website, and although the Board has considered definitions from it in prior cases, we recognize the inherent problems regarding the reliability of Urban Dictionary because it is a collaborative website that permits anyone to submit or edit a definition.” *In re Lizzo LLC*, 2023 USPQ2d 139, at *10 (TTAB 2023) (cleaned up; citation omitted). We therefore consider Urban Dictionary evidence only where the non-offering party (here, the Examining Attorney) has an opportunity to rebut the

²³ *See* 6 TTABVUE 10; *see also* May 3, 2022, Final Office Action, at TSDR p.14 (Collins Dictionary showing “no results for ‘LAFOND’ in the English-French Dictionary.”).

²⁴ *See id.*

evidence, and even then we tend to be cautious, due to its nature, about giving it too much weight in the absence of evidence corroborating the definition at issue. *Id.*

Here, the Examining Attorney had an opportunity to rebut this evidence, so that is not an impediment to Applicant. But the problem is that there is no corroborating evidence that gives us even a minimal degree of confidence that any significant portion of the consuming public has been exposed to or recognizes this definition. In fact, the only actual dictionaries in the record (Merriam-Webster Dictionary and Collins Dictionary) contained no definition of “lafond.”²⁵ We therefore decline to give any weight to the Urban Dictionary definition cited by Applicant.

Applicant also argues that “Lafond” is a place name in Alberta, Canada.²⁶ However, the fact that a surname is also a place name is by itself not that significant, unless there is evidence suggesting that the place name significance to the U.S. consumer is the same or greater than the surname significance, particularly in light of the fact that places are commonly named after people. *See Harris-Intertype*, 186 USPQ at 240; *In re Thermo LabSys. Inc.*, 85 USPQ2d 1285, 1290-91 (TTAB 2007); *In re Isabella Fiore, LLC*, 75 USPQ2d 1564, 1567 (TTAB 2005); *In re Hamilton Pharm., Ltd.*, 27 USPQ2d 1939, 1943 (TTAB 1993); *In re Champion Int’l Corp.*, 229 USPQ 550, 551 (TTAB 1985). The Examining Attorney points out that “Lafond, Alberta, Canada” is described as a “hamlet,” i.e., a “a human settlement that is smaller than

²⁵ See Sept. 10, 2021, Office Action, TSDR pp.4, 6.

²⁶ We note that Applicant makes this argument as part of its argument that LAFOND does not have the “look and feel” of a surname, *see* 6 TTABVUE 11-12, but we think the argument is more pertinent to whether there are any other recognized meanings of the term at issue other than as a surname.

a town or village.”²⁷ The Wikipedia entry cited by the Examining Attorney indicates that the population of Lafond was 35 in 1991. We find there is no evidence that would indicate that U.S. consumers have been exposed to Lafond, Alberta, Canada, anywhere near as much as they have been exposed to LAFOND as a surname. *See In re Gregory*, 70 USPQ2d 1792, 1796 (TTAB 2004); *cf. In re Colt Indus. Op. Corp.*, 195 USPQ 75, 78 (TTAB 1977) (significance of FAIRBANKS as a well-known city in Alaska at least equal to its surname significance).

Notwithstanding the evidence in the record indicating that there is no French-English dictionary listing for “lafond,”²⁸ Applicant insists that “under the doctrine of foreign equivalents, the word ‘Lafond’ translates from French to English as ‘the bottom.’”²⁹ The Examining Attorney disputes the accuracy of the translation and the probative value of the Google Translate page that Applicant cites as evidence. First, the Examining Attorney notes that the Google Translate page reflects that Applicant searched for “la fond” (i.e., as two words), rather than the one-word term “lafond” that Applicant seeks to register.³⁰ Second, as mentioned earlier, the Examining Attorney asked that we take judicial notice of two CollinsDictionary.com excerpts, and we agreed it is appropriate to do so in this case. The excerpts indicate that there is no French translation of “la fond” (i.e., with the feminine French article “la”) but that

²⁷ See 8 TTABVUE 13 (citing Jan. 23, 2023, Denial of Reconsideration, TSDR pp.76-82).

²⁸ See May 3, 2022, Final Office Action, at TSDR p.14.

²⁹ See 6 TTABVUE 11 (citing a “Google Translate” page appearing at p.24 of March 10, 2022, Response to Office action).

³⁰ See 8 TTABVUE 12.

there is a French translation of “le fond” (i.e., with the masculine French article “le”).³¹

We agree that the Google Translate page submitted by Applicant for “la fond” is of de minimis probative value for the reasons stated by the Examining Attorney. Indeed, in *In re Weiss Watch Co.*, 123 USPQ2d 1200 (TTAB 2017), we gave no credence to a similar “doctrine of foreign equivalents” argument in circumstances similar to this case. *See id.* at 1204-05 (the Google Translate page reflected a term slightly different than the proposed mark WEISS and therefore did not reflect that German speakers would “stop and translate” the proposed mark WEISS as meaning “white”).

We find the evidence on this inquiry indicates that the primary meaning U.S. consumers attribute to LAFOND is that of a surname.

D. Whether LAFOND has the “structure and pronunciation” of a surname.

Finally, we consider whether the term has the “look and feel” of a surname. This is a subjective inquiry concerning whether LAFOND has the “structure and pronunciation” or “the look and sound” of a surname. *Mitchell Miller, A Pro. Corp. v. Miller*, 105 USPQ2d 1615, 1621 (TTAB 2013) (citing *Benthin*, 37 USPQ2d at 1333; *In re Sava Research Corp.*, 32 USPQ2d 1380, 1381 (TTAB 1994); *In re Industrie Pirelli S.p.A.*, 9 USPQ2d 1564, 1566 (TTAB 1988). Evidence pertinent to this inquiry “typically consists of other common surnames that are configured similarly and sound

³¹ *See id.* at 12-13.

similar to the proposed mark.” *tapio GmbH*, 2020 USPQ2d 11387, at *12 (citation omitted). Where the subject mark has aural, visual, structural, and/or other similarities with other surnames, that further supports that consumers perceive the term at issue primarily as a surname.

The record contains several pieces of evidence in this vein, including:

- Screenshots from the LexisNexis® public record U.S. surname database showing 2,025 occurrences of the variant surname LAFON and listing out the first 10 results³²; and
- A print-out from the LexisNexis® public record U.S. surname database showing 1,079 occurrences of the variant surname LAFONT and listing out the first 500 results.³³

These two surnames are quite similar to LAFOND, in that they vary only by one ending letter, are two-syllable surnames, and have a similar sound when spoken. Applicant dismisses these numbers as too small, but we think they further support that U.S. consumers view LAFOND primarily as a surname.³⁴

Decision: The refusal to register Applicant’s mark LAFOND under Section 2(e)(4) of the Trademark Act is affirmed.

³² See May 3, 2022, Final Office Action, TSDR p.17.

³³ See January 23, 2023, Denial of Reconsideration, TSDR pp.134-159.

³⁴ Applicant argues that the surname LAFONTAINE, which the Examining Attorney also cited, is too dissimilar to be considered under this *Benthin* inquiry. See 6 TTABVUE 14-15. We need not pass on the argument because we find that the significant number of instances of LAFON and LAFONT tilt this inquiry in favor of a finding that LAFOND has the look and feel (or structure and pronunciation) of a surname.